

July 22, 2021

VIA E-MAIL (nm.cai@state.nm.us)

Ms. Pamela Jones
NMED Air Quality Bureau
525 Camino de los Marquez, Suite 1
Santa Fe, New Mexico 87505

Re: Proposed Rulemaking – Oil and Sector – Ozone Precursor Pollutants (Part 50, Sections 20.2.50.1, et seq.)

Dear Ms. Jones:

The Truck and Engine Manufacturers Association (“EMA”) hereby submits its initial comments regarding the New Mexico Environment Department’s (“NMED”) proposed regulation to achieve further reductions of ozone precursor emissions from oil and gas operations in the State, to be codified at Title 20, Chapter 2, Part 50, Sections 20.2.50.1, et seq. (hereinafter, the “Proposed Regulation”). EMA is the trade association that represents the world’s leading manufacturers of internal combustion engines, including the spark-ignition and compression-ignition engines that would be covered under the Proposed Regulation. Accordingly, EMA has a direct and significant interest in the rulemaking process for the Proposed Regulation.

EMA has two specific comments regarding the Proposed Regulation, and EMA specifically endorses the comments that the Gas Compressor Association (“GCA”) has and will be submitting on points one and two below.

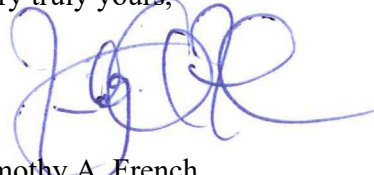
First, the Proposed Regulation would cover *portable* and stationary natural gas-fired spark-ignition engines, and compression-ignition engines.” (See Proposed Sections 20.2.50.113 A, B(1), B(5)(a), and B(6)). The State of New Mexico is expressly and absolutely *preempted* from adopting or attempting to enforce any standard or other requirement relating to the control of emissions from any new or existing portable engines, which are a subset of “nonroad engines” under Section 209(e) of the federal Clean Air Act. See 40 U.S.C. 7543(e); see also 40 CFR section 1068.30 (which controlling federal regulation specifically defines the term “nonroad engine” to include any engine that is “in or on a piece of equipment that is *portable or transportable*”); EMA v. EPA, 88 F.3rd 1075 (D.C. Cir. 1996). Accordingly, all of the provisions of the Proposed Regulation that would adopt any standard or other requirement relating to the control of emissions from any new or existing portable engines need to be deleted from the Proposed Regulation to avoid direct violation of federal law. Failing to do so will render the Proposed Regulation void and unenforceable as a matter of law.

Second, the proposed monitoring requirements (see Proposed Section §20.2.50.112.C(1)) should be revised to provide operators the option to develop and implement site-specific engine maintenance plans consistent with the EPA 40 CFR Part 60 Subpart JJJJ (See section §60.4243) regulation.

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Thank you for your consideration of EMA's comments, and please let me know if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'T. French', with a stylized, looping flourish extending to the right.

Timothy A. French
EMA General Counsel

cc: pamela.jones@state.nm.us
dwatson@jwenergy.com
EMA Stationary Engine Committee